

For: **Migrant Project Directors and Advocates**

From: **Migrant Delivery Working Group**

Date: **December 27, 1999**

Re: **BASIC POLICY ISSUES**
FOR MIGRANT LEGAL SERVICES

I. THE RATIONALE FOR SPECIALIZED MIGRANT LEGAL SERVICES PROGRAMS

A. The Original Rationale

In Section 1007(h) of the Legal Services Corporation Act of 1974, Congress directed the Corporation to study whether certain client subgroups (migrant and seasonal farm workers, Native Americans, the elderly and veterans, among others) face special barriers restricting their access to legal assistance and whether they have special unmet legal needs. The LSC undertook that study in 1977-78 and found with respect to migrant farm workers that, (1) migrant workers do face special barriers which limit their access to the legal assistance delivered by regular basic field programs; and (2) migrants do have specialized legal needs which cannot adequately be met through the regular basic field delivery system. Building on these findings the "1007(h) Study " (as it came to be known) concluded that there was a need for a system of specialized migrant legal services projects in order to overcome the access barriers faced by migrants and meet the special legal needs of migrants. The 1007(h) Study also determined the basic structure and features of the migrant legal services delivery system under which we have operated ever since. As the only comprehensive analysis of the migrant delivery system ever undertaken by LSC, the 1007(h) Study remains today the principal embodiment of LSC's migrant legal services policy.

Since that 1977-78 study, the Legal Services Corporation has found confirmation of its analysis and conclusions regarding the need for specialized legal services to migrants in a 1993 study undertaken on behalf of the American Bar Association by its Standing Committee on Legal Aid and Indigent Defense [hereinafter "SCLAID"] at the request of the U.S. Congress, among others. SCLAID held hearings (1) to determine whether the living and working conditions of migrant farmworkers continued to warrant special federal funding for migrant legal services programs, (2) to make an assessment of the systemic problems cited by agricultural employers and their advocates concerning migrant legal services programs and (3) to evaluate proposed changes to the law governing migrant legal services programs. [at page 2]. Having found that migrant agricultural workers continue to suffer pervasive and fundamental problems, the SCLAID Committee concluded that there continues to be a concomitant need for specialized legal services as defined by the Legal Services Corporation in its 1007(h) Study. Shortly thereafter, the Commission on Agricultural Workers [as directed by Section 304 of the Immigration Reform and Control Act of 1986] made a similar finding in its 1993 final report submitted to Congress.

B. Reassessing and Updating the Rationale

LSC should reexamine the need for specialized migrant legal services, building upon the 1007(h) Study and bringing it forward by adding information developed through studies, experience or other sources with an eye toward having a more current reflection of the special requirements of migrant delivery systems. This reexamination should include:

1. An updated assessment of legal services access barriers faced by farm workers and of their specialized legal needs.
2. An examination of the special costs associated with providing representation to farm workers.
3. An evaluation of new research and data regarding the socio-economic characteristics of farm workers, the employment conditions they face, the nature of the labor markets in which they work, and farm workers' access to legal services and other social services.
4. Analysis of the actual experience of migrant legal services programs in addressing the needs of migrant clients over the last 30 years, including the record of what has or hasn't worked and why, and with reference to applicable standards of the practice of law.
5. Consultation with knowledgeable persons and groups outside the legal services community for the insights to be gleaned from their experience and observation. These consultations could include, *inter alia*, farm worker organizations and advocates, researchers, and agricultural organizations.
6. Evaluation of the ability to expand funding that comes from sources other than LSC, given the large population of workers that do not qualify for service with LSC funds.
7. Updating and integration of LSC policies and mandates, including assessment of access barriers created by LSC policies. This evaluation should include:
 - a. Statewide Planning for each state: "Statewide planning" calls upon all LSC recipients to participate in a state planning process to examine for a statewide perspective what steps should be taken in their states to further develop a comprehensive, integrated statewide delivery system [LSC Program Letters 98-1 and 98-6, Robert Gross, LSC Senior Program Counsel for State Planning, 6/8/99].

- b. **Case Information Disclosure:** Beginning 1/1/98, LSC recipients have been required to disclose certain information about cases filed in court to LSC and, upon request, to the public. This includes plaintiffs' name and full address, causes of action and case number. [FY 1998 Appropriations Bill, PL 105-119; 45 CFR 1644 and LSC Program Letter 98-2] The SCLAID Study, above, clearly documented the potential consequences, i.e. including delay of an appropriate remedy and/or potential exposure to plaintiff to employer retaliation, of such a practice.
- c. **Program Priorities:** Beginning May 21, 1997, advocates employed by LSC recipients are prohibited from expending time or resources on cases or matters that are not within its written priorities. To the extent that migrant farmworkers are amongst the most marginalized in the local communities, their needs are less likely to be included in program priorities generated by a review of past practices and current needs.
- d. **Differentiating eligible from non-eligible "aliens":** The LSC/Erlenborn Commission held hearings during the summer of 1999 to review the scope of LSC recipients' authorization to represent "aliens" ... 'present in the United States' [45CFR 1626.5 The policy recently adopted by the LSC Board will impact the number of clients and the extent of service that LSC recipients will be able to provide certain "aliens" who are not considered "present" in the United States

C. A Re-examination of Access Barriers

The experience of the last 20 years, would lead us to reaffirm much of what the 1007(h) Study concluded about barriers which restrict farm workers' access to legal services. However, our experience also enables us to describe these access barriers and special legal needs in ways which are more complete and more relevant to present day circumstances. Many of these barriers and needs are exacerbated for the growing number of workers recruited under the H2A and H2B programs. Among the access barriers which should be highlighted are the following:

1. Isolation in Remote Locations -

Migrants commonly reside (temporarily and permanently) in places which are:

- far from towns with a legal service office;
- in hard-to-find back road areas;
- hidden away from public roads;
- without regular street addresses, mail delivery, or telephone service;
- on farms or other private property with restricted ingress and egress.

2. Inability to Travel to a Regular Legal Service Office –

Migrant workers frequently:

- Lack transportation to travel to a legal service office;
- Have no available form of public transportation or the money or time required to use such transportation;
- Are dependent on employers for transportation.

3. Unavailability During Regular Business Hours –

Migrants are often unable to access legal assistance through a normal basic field program because they:

- Are working during the regular business hours of a basic field legal service office;
- Unable to get time off work to go to the legal services office.

4. Cultural Isolation: Language, Race, National Origin, Ethnicity –

Migrants often are isolated from the local community and from local basic field legal services staff because:

- the migrants speak only Spanish while the local community and legal services program does not;
- the migrants are monolingual in another language (e.g. an Asian or indigenous language) which is not widely spoken in the local community and legal services program;
- the migrant workers do not feel comfortable seeking help in the local community or local legal services program because of differences in race, national origin, ethnicity or other cultural differences;
- the migrant workers may be subject to over discrimination in the local community because of race, national origin, ethnicity or other cultural differences.

5. Lack of Familiarity with the Local Area, Agencies and Resources –

Being unfamiliar with an area to which they have migrated or recently immigrated, migrant workers often lack knowledge of:

- local legal services offices;
- local public and private social service agencies;
- local agencies which enforce worker rights;
- other sources of aid or referral.

6. Dependence on Employers and Vulnerability to Retaliation and Intimidation –

Migrants ability to obtain legal assistance is often hindered because:

- they are extremely dependent on growers and labor contractors for their immediate job, earnings and working conditions, for future work opportunities, for housing, for local transportation in the work area, for transportation back home at the end of the season, for medical care, for work records and verification which are essential for various public benefits, for loans during the season and in the off-season, etc.;
- their legal claim often is against the very employers on whom they are so dependent;
- associating with legal advocates on any matter can mark a worker as a potential “troublemaker” in the eyes of the employer;
- workers are commonly subject to economic and/or physical retaliation for seeking legal assistance or just for talking to legal advocates;
- workers who assert their legal rights are sometimes subjected to retaliation by local law enforcement officials, by immigration officials, or other third parties –sometimes acting in concert with the employer and sometimes not;
- the ever present *potential* for retaliation intimidates workers into submission and silence, even when not faced with a specific threat of retaliation;
- These problems are especially acute for the growing population of H2A and H2B workers. These workers may not lawfully change employers, and may fear that they themselves, as well as friends and neighbors from their home village, may be blacklisted if they complain.

7. Discomfort Asserting Claims During the Work Season or Away from the Security of Home -

Many migrants who may later wish to exercise their rights are nevertheless reluctant to do so during the work season or while they are still away from their home base, because of:

- their primary need to get all the work they can while it is available;
- increased dependence on the employer and vulnerability to retaliation while in the work area;
- generalized insecurity in an area which may be culturally, linguistically, and ethnically less familiar and secure than their regular home area;
- greater sympathy for the grower among local judges, juries, and agencies often coupled with suspicion or antagonism toward the worker as an outsider.

8. Lack of Knowledge of Legal Rights - Distrust of the Legal System - Resignation to Injustice –

Many migrants (including long time farm workers, but especially recent immigrants and those who are new entrants in the farm labor market):

- have little knowledge of the legal protections which cover them in the workplace;
- do not know how or where to seek help with violations;
- assume that the legal system is so biased against them, that a true remedy is impossible;
- assume that their participation in the legal system may result in problems with the criminal justice system;
- fear that legal entanglements may jeopardize their immigration status, even where their immigration status is perfectly lawful;
- are resigned to a sense of powerlessness and conditioned by experience to accept injustice as the norm.

9. Mobility and Transience –

It is especially hard for the normal basic field program or private law firm to provide adequate legal assistance to the typical migrant—particularly assistance involving on-going representation- because:

- the migrant client often is in the firm's service area for a brief period only;
- the migrant client may never again return to that particular service area;
- the migrant client's home may be hundreds or thousands of miles away, and, for all H2A and H2B workers and many other workers, will even be abroad;
- the migrant's home may have no telephone and may not have a conventional address;
- the migrant client may be away from his/her home frequently and for unpredictable periods;
- the client may not have a clear cut home-base to which he/she regularly returns;
- the migrant client may be difficult to locate and keep up with as he/she moves irregularly from one job to another and one work area to another;
- the migrant program or attorney may have to arrange and pay for the client's travel to attend hearings, trials, or depositions far from where the clients happens to be at the time.

10. The Advocate's Anxieties about Controversy and Hostile Reactions from Opponents –

Migrants may have a difficult time getting fully effective representation because:

- representation of migrants in claims against their grower employers often engender particularly adversarial responses and vigorous protests from the growers and from their supporters at the local, state or national level;
- even legitimate claims handled by the migrant's counsel in a professional manner can become the subject of factual distortions, exaggerated charges in the press and in political forums, or hostile investigations;
- private attorneys in farming communities are reluctant to take cases which are unpopular with the local employer community;
- legal services programs sometimes shy away from otherwise legitimate representation which might be controversial or which may evoke hostile reactions from program board members, local or national public officials, grower organizations, funding sources, etc.

D. A Re-examination of the Specialized Legal Needs of Migrants

The last 20 years of migrant legal services experience have demonstrated that migrant farm workers do indeed have a host of specialized legal needs which neither regular basic field programs nor the private bar are in a position to address. That experience has given us a much more sophisticated understanding of what those specialized needs are and how to address them. Moreover, the specialized legal needs of migrants have changed somewhat as the nature of the farm worker population and the various migrant labor markets have changed. Some primary examples of these specialized legal needs are presented below divided into three categories: specialized legal issues; specialized factual circumstances; and specialized client service skills.

1. Specialized Legal Issues -

Representation of migrants typically requires specialized knowledge and expertise in areas of substantive and procedural law which are quite different from those normally practiced by basic field programs.¹ Examples include:

- The Migrant and Seasonal Agricultural Worker Protection Act;
- The Fair Labor Standards Act and its specialized provisions affecting employment in agriculture and agricultural processing;
- The H-2A and H-2B laws and regulations governing certification and work terms for temporary foreign agricultural workers;
- The Wagner-Peyser Act provisions regarding interstate and intra-state recruitment of migrant workers;
- Special employment tax regulations governing income taxes, FICA taxes, and employment insurance taxes in agriculture;
- A plethora of state laws regulating farm labor contractors, payment of wages, minimum wage, farm hand's liens, etc.;

¹ Although several of the laws in the following list cover non-agricultural employment as well as agricultural employment, they contain key provisions uniquely applicable to agricultural employment.

- Federal and state laws regulating health and safety standards in migrant labor camps;
- Specialized federal and state laws regulating agricultural field sanitation (toilets, drinking water, washing facilities);
- Federal and state laws governing exposure to pesticides and other toxic agricultural chemicals;
- Workers compensation and other state laws addressing work place injuries;
- Specialized farm worker public housing programs operated by the U S Department of Agriculture, HUD and other agencies; Migrant education programs;
- Immigration law especially affecting farm workers (e.g. the SAW program, the H-2A and H-2B programs, search and seizure law as applied to agricultural work places, immigration laws allowing entry into the United States for clients whose presence is needed for trial);
- Civil rights law uniquely affecting agricultural workers (e.g., access to labor camps, employment discrimination issues unique to agricultural employment, civil rights of striking or protesting workers);
- Protections against retaliation;
- Special provisions in public benefits laws which uniquely affect immigrants and farm workers (e.g., disqualifications from public benefits resulting from the Personal Responsibility and Work Opportunity Act of 1996, irregular seasonal income, residency requirements);
- Procedural law peculiar to migrant legal services practice, such as: venue law controlling choice among various possible forums for migrant litigation; use of long-arm jurisdiction over out-of-state growers to give farm workers access to a forum near the home-base where they reside and were recruited; special burdens of proof for reconstructing wages and hours where employers have kept incomplete or falsified pay records; procedural rules and practices governing the non-availability of migrant plaintiffs and witnesses for trial or depositions during migration seasons;
- Specialized state laws covering workers' right to organize and bargain collectively, and the interplay between these laws and the coverage of some workers under the National Labor Relations Act.

2. Specialized Factual Issues

Farm worker cases present specialized factual circumstances which are unique to farm worker practice. Effective practice in this area requires familiarity with these fact patterns and a broad range of background knowledge about agricultural practices and labor markets. The normal basic field program would have no reason or opportunity to acquire this specialized knowledge. Examples of specialized fact patterns requiring specialized migrant advocates include:

- Unique patterns of migration and seasonal employment peculiar to the different crops and regions within the service area;
- Various methods of recruitment, hiring and supervision used in different crops and regions each with its own unique legal implications;

- An often complex array of growers, agricultural processors and labor contractors operating in the service area with varying methods of operation and unique but important interrelationships among them;

- The common use of unique subterfuges to conceal the identity of the real employer or to shield the real employer from liability for wages, benefits, taxes, and working conditions. The particular subterfuge used can vary from one crop to another, from one region to another and often from one employer to another. Frequently the farm workers themselves have little or no knowledge of who their employer is (this being one of the main purposes of the subterfuge);
- Agricultural employers use a number of different pay methods, not normally found in non-agricultural employment. These include specialized (and often irregular) practices such as: unrecorded cash payments; group wage payments; random or irregular pay periods; devices to avoid payment for certain types of work time; fraudulent or excessive deductions for housing, food, transportation costs, tools, insurance, loans, alcohol, etc. These various practices benefit employers or harm workers in different ways and have different legal implications;
- Agricultural employers use unique and problematic payroll record keeping practices including: non-existent, incomplete and falsified records; lumping together multiple workers under the pay record of a single worker; fraudulent use of a worker's social security number for other workers; failure to report or pay state and federal payroll taxes, etc.;
- Special transportation practices and labor housing practices are utilized in agriculture and these often vary very significantly among different crops, growing regions, and employers. The different practices have differing impacts on workers' safety and health and on the workers' real earnings. Agricultural housing practices normally have little in common with the conventional landlord-tenant relations handled by basic field programs and transportation issues have no real analog at all in the typical basic field practice.

3. Specialized Client Service Skills

The unique nature of migrant farm worker practice requires specialized client service skills, unique approaches to delivery of legal assistance and representation techniques specially adapted to meet the needs of migrant clients. In large part these are the special skills, approaches and techniques which are required in order to overcome the access barriers identified above in Section I.C. of this paper. They also represent the specialized capabilities a legal services program needs in order to meet the special legal needs identified above in Section I.D. The list of specialized service skills which follows helps to illustrate why there is a continuing need for specialized migrant legal services programs which by necessity operate differently from the basic field programs. Specialized skills, approaches, techniques, and capabilities needed in order to represent migrants include:

- Expertise in conducting regular in-season outreach and client follow-up able to reach isolated clients where they work or reside. This necessitates substantial work outside the office as well as extensive travel in the local service area and often outside the local area. It requires expertise in locating hard-to-find clients and the ability to sustain institutional knowledge of the places where clients live, work and gather;
- Capacity to conduct outreach and other client contacts during evenings, weekends and other non-business hours;

- General ability throughout the program to communicate with clients fluently in their native language, (often Spanish, but sometimes including less common languages spoken by indigenous populations);
- Staff with as much cultural and experiential affinity with the clients as practicable. Specialized migrant programs are more likely than general basic field programs to be able to hire and retain staff who have experience as farm workers or staff from cultural backgrounds similar to that of the client community;
- The capacity to conduct off-season outreach among the program's client community while those clients are still in their home base, either directly or through cooperation with specialized migrant programs in the home area; the ability (directly or through cooperation with another migrant program) to follow up on previous in-season client contacts, once the season has concluded or after the workers have returned home; the capacity among home base migrant programs to assist programs in receiving states with cooperative outreach, client contacts and other support;
- The ability to maintain ongoing contact with clients as they migrate from place to place and to sustain an attorney-client relationship in spite of long distances and irregular contact; ability to transport clients to a hearing, deposition, trial, etc. where necessary to insure the client's ability to fully participate in the legal process;
- The capacity on the part of the program and its advocates to conduct litigation and other legal representation across a broad geographic area. For example, most programs should be able to carry cases, as necessary, in the various regions of the program's state. In addition some programs will need to have staff travel to another state in order to take depositions, locate or meet with clients there, complete client discovery documents, or handle litigation filed in the other state. In such cases the ability to work effectively with co-counsel in another state may also become an important skill required of the migrant programs involved;
- Particularly strong emphasis on client education efforts to increase awareness among the client community of the laws affecting them and of their ability to remedy violations of their legal rights;
- Specialized skill and expertise in the areas of substantive and procedural law outlined in Section I.D.1. above;
- Special expertise in federal court litigation, as this is often the best or only available forum for migrant cases;
- Specialized legal practice skills such as: effective examination/cross examination through interpreters, translation of general court proceedings for non-English speaking parties and observers; group and class representation, preservation and presentation of testimony from witnesses who cannot be present at trial; skill in analyzing, interpreting, and presenting voluminous payroll and employment data (for example, this latter can range from technical skills in dealing with computerized data formats to specialized techniques for reconstructing hand written records which are incomplete, missing, contradictory, incoherent, or falsified);
- Ability to develop and sustain a specialized understanding of key aspects of farm labor practices and farm labor markets affecting the program's client community, including subjects like those listed above in Section I.D.2;

- Familiarity with the private bar handling plaintiff's employment cases and the ability to draw on their expertise as informal consultants or as formal co-counsel; the ability to make effective referrals to private practitioners and, where necessary, to co-counsel with private lawyers in order to provide them with essential expertise or client communication and support;
- Ability to identify other legal problems affecting the clients' case, such as welfare or immigration impacts;
- Ability to work with other service providers in the local communities, and to help develop services that are tailored to the client population.

E. An Analysis of the Exceptional Costs Associated with Serving Migrant Workers

A third key rationale supporting the need for specialized migrant funding is the extra cost required to adequately deliver legal assistance to migrants. Many aspects of migrant service and representation make it more expensive to provide a given level of service to migrants than to provide the same level of service to a basic field clientele. Some examples are listed below. On the one hand these factors add service costs substantially beyond the costs faced by non-migrant basic field programs. On the other hand, a legal service project which *specializes* in migrant representation is able to use its specialized expertise and techniques to deal with these cost factors more efficiently than a basic field program would be able to, thereby keeping these added costs below what they otherwise might be. Examples of exceptional cost factors include:

- Extensive time commitment and travel (both local and long distance) required for outreach to clients;
- Extensive local travel for outreach and long distance travel in connection with ongoing representation, sometimes including interstate travel costs for either staff or clients;
- Overcoming other access barriers requires a greater expenditure of attorney and paralegal time on the typical migrant case compared as to the typical basic field case;
- High telephone costs due to long distances between offices within a program and between different migrant programs, coupled with the need for regular contact among them. High telephone charges also result from incoming long distance calls from clients, and the use of conference calls to keep in contact with groups of clients that have dispersed across the country;
- Most litigation is moderately to highly complex federal litigation involving multiple plaintiffs, multiple defendants, or multiple states; non-existent, incomplete or fraudulent records; use of experts for payroll reconstruction or other essential factual issues; obscure or deliberately hidden factual details requiring extensive investigation and discovery; necessity to use translators for most deposition and trial testimony (adding both time and expense); and novel issues of law;
- Vehement opposition from defendants, even those with weak cases, drives up litigation costs;
- The specialized nature of the practice means that training is less likely to be available locally through the private bar or the basic field training programs;

- Some migrant programs, especially larger or more experienced programs, carry the added role and costs of providing essential functions for the national migrant legal services community as a whole, such as training, litigation support, and representation of farmworker clients before national administrative and legislative bodies;

F. Why the Decennial Census does not Provide an Adequate Basis for Funding Legal Services for Migrant Farm Workers

There has sometimes been a misconception that the rationale for having separate migrant legal services programs is an undercount of migrants in the Decennial Census. For example, in the mid-1980's some members of the LSC board proposed ending separate funding for migrant programs on the theory that the 1980 Census did a better job of counting migrants than the 1970 Census had and therefore there no longer existed any reason for separate migrant funding.

Not only was this Census rationale not expressed in the 1007(h) study, such a rationale would be nearly impossible to accurately apply. First of all, continuing research confirms that the Decennial Census does a very poor job of enumerating migrant and seasonal farm workers. There are also more general problems with the Census' inadequacy at counting those segments of the population who are mobile and who live in unconventional housing (as many farm workers do). Moreover, the Census counts people wherever they happen to be during early April when the Census is taken. It also only records the respondent's employment during the few weeks preceding the Census. In April migrants may or may not be in the state where they reside or work. Finally,, they would not be recorded as agricultural workers if they were not doing agricultural work at the time of the Census.

The U.S. Census bureau has sought to improve the accuracy of the year 2000 census, among other things, by hiring additional personnel, improving outreach, creating partnerships, and developing extensive advertising campaigns. Nonetheless, many argue that a migrant undercount remains likely because (1) many migrants will be mobile during the period of the census count and will not be available to register, (2) a substantial number of migrants fear the government and will refuse to participate in the census, (3) many migrants lack knowledge of and about the census and will be either excluded or misidentified, (4) many farmworkers retain language and cultural conflicts which create barriers to adequate completion of the appropriate census forms.

Consequently even a more comprehensive Decennial Census would provide little guidance as to how many migrant farm workers exist and as to where migrants need and utilize legal assistance. Finally, reliance on the Census count to fund migrant legal assistance does not do anything to address the special access barriers, specialized legal needs or exceptional costs involved in migrant legal services.

II. MAINTAINING AN INTEGRATED DELIVERY SYSTEM

In order to fully serve their migrant clients and to adequately address the employer practices which adversely affect their migrant clients, migrant legal services programs need to maintain an integrated delivery system, which is accessible to migrant clients at every stage in their work-and-migration cycle.

A. Need for Legal Assistance at the Work Site

Often migrants need access to legal services advocates at the sites where they work in order to address legal needs which can only be effectively asserted there. For example, the migrant client who arrives to find that the promised job or housing is no longer available to him may need immediate assistance compelling the employer to comply with the promise. When the water or electricity goes out in the labor camp, the occupants often need assistance then and there to get the problem remedied. The farm workers who go on strike for better wages, need legal representation at the work site to protect their rights to strike and picket. The migrants held in peonage by a crewleader need help there where they are imprisoned.

B. Need for Legal Assistance in the Home Base

On the other hand migrants sometimes experience a need for legal assistance which uniquely arises where they live. For example, the South Carolina workers who are told their last paycheck will be mailed to them back home in Florida and then never receive it, need access to legal assistance at their local office in Florida to know how to collect their money. The worker who falls out of a tobacco barn in Kentucky, is stabilized at a local hospital and then immediately put on a bus by the employer and shipped home to Texas needs help from the migrant legal services program in Texas to get the needed medical attention and evaluation and to know how to begin pursuing an injury claim against the employer. A California family, who worked in Washington last year for a California labor contractor who was stealing their social security deductions and falsely reporting them as independent contractors, may first discover this fraud when the IRS assesses the family with a tax deficiency a year later in California. The family will need help in California to deal with the IRS and to begin legal action against the labor contractor who is also now back in California.

C. Need for Integrated Legal Services at Both the Work Site and the Home Base

In some of the most common scenarios migrants get the greatest benefit from having access to legal assistance both at the work and home base ends of the cycle. For example, outreach in Virginia can help workers realize they are not getting paid the minimum wage and that they have a remedy for that; they may then choose to work the remainder of the season and once they have returned to Florida decide to take action on the claim. The ability of the Ohio migrant program to represent its clients in a class action arising out of employment in Ohio can be greatly enhanced where legal services advocates in Texas are available to co-counsel, meeting with affected clients back in

Texas and getting them join in the action, preparing discovery responses for the responses for the named plaintiff in Texas, and sharing the litigation costs. The viability of a worker's injury claim in Kentucky may depend on someone from a border program being able to follow-up with the client in Mexico to assist the client in pursuing the claim in the Kentucky courts with a Kentucky lawyer. Having legal assistance at both ends of the work-and-migration cycle means that the migrant legal services program in Puerto Rico and North Carolina can cooperate to better represent the interests of Puerto Rican farm workers who are lured to North Carolina with misleading employment promises. It also means that migrants recruited in Texas and cheated in Alabama can have an option to seek redress either in a court in Alabama close to where the work took place, or close to the worker's home in a court on the Texas border.

D. Gaps in the Current Delivery System

There is an endless number of such scenarios involving virtually any state or group of states. All are examples of how the availability of legal services throughout the migrant stream and/or the coordination of legal services efforts among different programs can: (1) greatly improve migrants access to the legal system, (2) provide many workers with a choice of forums for their claims, (3) minimize the chances that workers fall through the cracks when they leave one program's service area or when they leave the country, and (4) maximize the ability of clients to remedy illegal employer practices.

In reality, however, there are major gaps in the present delivery system. To name three prominent ones:

1. Migrant stream programs who would like to maintain better contact with their clients and potential clients after they leave the stream state, often don't have the resources or the coordination with base state programs to do that as efficiently as they would like. This is a frequent frustration for stream state programs. The difficulties of conducting outreach, follow-up, and ongoing contact with clients after they have returned to their home bases means that some meritorious cases cultivated by the stream state program never get off the ground while some other cases, once started, wither away despite the best efforts of the stream program.

2. Migrant base states don't have sufficient resources to adequately represent their clients who do work in other states and bring back employment claims arising from that work. The current funding formula largely allocates funding to the migrant worksites. The one significant exception to this is an enhancement factor given to Texas and Puerto Rico as the two home bases with a large number of migrants who live in those home bases, but do not work *at all* there. However, the funding formula does not account in any way for the sizable number of migrants who live in Florida, California, Arizona, Texas, Washington and probably other places, who do *some* work in those states, but who also do a great deal of work in other states and bring claims back from those work states to their home base states

3. Another large gap in the delivery system is the absence of organized follow-up with eligible migrant clients in the Mexico home base. This is particularly an issue for H-2A and H2B workers, who must return to their home country after completing work in the US. Informal follow-up in Mexico by some programs in a few particular cases has proven to be

very successful in serving the eligible clients in those particular cases, but our capacity is extremely limited in this area and it remains a gap which is largely unfilled and which is growing larger every year.

E. Policy Recommendations for Improving Integrated Delivery

It is recommended that LSC evaluates these gaps in the current delivery system and devise policies to improve the integrated delivery of legal assistance to migrants throughout the work-and-migration cycle. In its review LSC should specifically consider the following policy recommendations:

1. Increased exhortations and discussion about coordinating delivery better.

While this might provide some encouragement, it would not be enough to adequately address the need for more integrated delivery, since the current limiting factor for programs which would like to do more coordination is not lack of will and vision, it is the fact that current resources for coordinating delivery are already stretched beyond the point of over-commitment.

2. Integrated Delivery Grants.

LSC should be urged to allocate additional money (not from the current migrant line) for meritorious proposals expressly aimed at filling gaps in the current delivery system, improving coordinated client service among the states. Individual programs or groups of programs could apply for the grants. Each proposal would be judged on the basis of the proposal's prospects for actually providing additional direct client service and access, on the specificity and reasonableness of the delivery plan in the proposal, on the demonstrated ability of the applicants to carry out the plan successfully and on the likelihood of enhancing coordination among the programs involved. The grants would be designed to encourage innovation and experimentation with new ideas while holding the recipients accountable for actual increasing direct services to clients. It is recommended that the money for these grants would not come out of the current migrant line, but from new allocations of Legal Services money above the present migrant line.

3. More Support.

Programs providing support functions for migrant legal services programs should be called on to focus specific attention on issues of integrated delivery and to devise support measures specifically designed to address gaps in the delivery system. LSC should make funding available for regional and national trainings for LSC programs and their legal services partners in order to develop more support and coordination.

4. Technology initiatives.

Technology initiatives to improve the delivery of legal services to migrants through a network which can ensure (1) an effective monitoring analysis and timely distribution of information [electronic library of briefs, forms, best practices and proprietary texts and client information materials], (2) coordinated research, education and training at the local, state and national level, and (3) coordinated civil legal assistance liaison --- all of which might be accessible by all institutional providers and private attorneys providing civil legal assistance to migrants --- can be and should be implemented. The advantages and disadvantages of using technology to communicate [e.g. "centralized intake hot lines", 1-800 telephone numbers, remote video conferencing] with migrant farmworkers needs to be evaluated.

III. RELATIONSHIPS BETWEEN MIGRANT PROGRAMS AND BASIC FIELD PROGRAMS

A. One State, One Program

Since before the 1007(h) Study, it has been LSC policy to fund no more than one program in a state to provide all the migrant representation in that state, rather than to divide the migrant funding among multiple programs in the same state. No one in the migrant legal services community has taken issue with this policy.² Moreover there are obvious efficiencies in having the migrant funding and expertise concentrated in a single program. The proposed LSC migrant policy review should re-examine this policy and reaffirm it, if neither the migrant field programs nor the LSC policy review finds some new reason to question it in the meantime.

B. Use of Migrant Funding for Representation of Non-Farm Workers

There have from time to time been instances in some programs of using migrant funding or staff for basic field purposes which do not support representation of farm workers. Usually this takes one of three forms: (1) The parent basic field program retains an unreasonably high proportion of the migrant grant for administrative overhead; (2) An attorney or paralegal who is designated as part-time migrant and part-time basic field, spends less than the designated portion of his/her time on migrant representation and more than the designated portion on basic field; (3) A full-time migrant attorney or paralegal, funded out of the migrant grant, is either required or permitted to spend a substantial part of his/her time on representation of basic field clients.

It is recommended that LSC's policy review re-affirm that these practices are already inconsistent with current LSC migrant policy and will continue to be. It is also recommended that LSC provide training and guidance to basic field directors on how to properly calculate and account for administrative overhead for component migrant programs, so as not to divert an unreasonable portion of the migrant grant away from migrant client services.

² The issue of regionalization raises the converse question: whether in some instances there should be more than one state covered by a single program.

C. Division of Responsibility between Migrant Programs and Basic Field Programs

A problem area which should be addressed and resolved by the proposed LSC migrant policy is the question whether migrant programs should handle any and all legal problems presented by migrants or whether some problems are more appropriately handled by the basic field program. This is essentially a question of defining the specialized purpose of the migrant funding.³

The issue here can be framed with an example: Occasionally a legal service program with a migrant component has followed an approach under which the migrant program is responsible for all representation on any matter presented by a migrant client. If a migrant comes to the program seeking a divorce, or a routine request for help with a visa petition, or a routine consumer credit matter, or a routine food stamp application, then under this approach the case would be referred to the migrant program and it would be up to the migrant program to either accept the case or reject the case if it does not fall within the migrant program's priorities. In either event the basic field program would not handle the case, because the basic field program does not do any cases for migrants, referring them instead to the migrant component.⁴

It is recommended that LSC's policy review clarify that the approach above is not a proper use of migrant funding, because it is neither efficient nor is it consistent with the underlying policy rationale for migrant funding. The migrant program's expertise is in those areas involving specialized legal needs unique to migrants. Moreover, meeting those specialized legal needs is at the core of the justification for having specialized migrant programs. On the other hand the expertise of the basic field program is better suited to meeting the client's non-specialized need for assistance with a divorce, immigration, consumer, or routine food stamp issue, even if the client does happen to be a farm worker.⁵

This still leaves open the question whether migrant projects should limit themselves exclusively to handling cases involving specialized legal needs of farm workers arising out of their farm worker status or whether there are certain circumstances in which migrant programs may appropriately handle non-status cases for farm workers. It is recommended that migrant programs and/or LSC consider the policy alternatives and articulate an appropriate policy.

³ The question addressed here is not whether migrant programs should represent non-migrant, seasonal farm workers. That issue will be addressed elsewhere. The question raised in this section is whether migrant programs should represent farm worker clients in all civil matters including those non-farm worker matters which might otherwise be the kind of case which is normally handled by the basic field program.

⁴ It is reported that some basic field programs go even further, automatically referring to the migrant program any client who speaks Spanish or who is Latino or who presents an immigration problem.

⁵ It is recommended that LSC policy specifically disapprove the practice of migrant programs receiving referrals on every client who happens to speak Spanish or every client who happens to be Latino or in need of immigration assistance.